SALES — CONDITIONAL SALES — CONDITIONAL SALE OF GOODS TO DEALER TO BECOME PART OF HIS STOCK IN TRADE. — A vendor sold goods to a retail dealer under a contract which provided that the title should remain in the vendor until the price should be paid. It was contemplated, however, that the goods might be sold in the course of the vendee's business as part of his regular stock in trade. The vendee mortgaged the whole stock to secure a loan made without notice of the contract. *Held*, that the reservation of title by the vendor is ineffective as against the mortgagee. *Mishawaka Woolen Mfg. Co.* v. *Westveer*, 191 Fed. 465 (C. C. A., Sixth Circ.).

Where goods are sold under a conditional sale but are to become part of the buyer's stock in trade, a *bonâ fide* purchaser for value is held to acquire title as against the seller. *Winchester Wagon Works & Mfg. Co.* v. *Carman*, 109 Ind. 31, 9 N. E. 707; *Spooner* v. *Cummings*, 151 Mass. 313, 23 N. E. 839. But *cf. Sargent* v. *Metcalf*, 5 Gray (Mass.) 306. Many courts have also held this reservation of title ineffective as to creditors, either on the view, as taken in the principal case, that such a reservation was wholly inconsistent with the other terms of the contract, or that it should be presumed to be fraudulent as to creditors. *Pontiac Buggy Co.* v. *Skinner*, 158 Fed. 858; *Ludden* v. *Hazen*, 31 Barb. (N. Y.) 650. Such a contract is sometimes considered, however, as merely conferring the power of an agent upon the buyer to pass title directly to the purchaser. *Fitzgerald* v. *Fuller*, 19 Hun (N. Y.) 180. The cases which hold that neither creditors nor those who purchase otherwise than in the regular course of trade can retain title as against the seller would seem consistent with this view. *Lewis* v. *McCabe*, 49 Conn. 141; *Burbank* v. *Crooker*, 7 Gray (Mass.) 158. The preferable view, however, by which the same result as that in the principal case would be attained, would seem to be that the seller is estopped as to all persons, creditors and purchasers alike, who may have acted on the faith of the buyer's having title. See *Spooner* v. *Cummings*, 151 Mass. 313, 316, 23 N. E. 839, 840; WILLISTON, SALES, § 329.

SALES — TITLE OF GOODS SUBJECT TO BILL OF LADING — CONCLUSIVENESS OF BILL OF LADING. — An exporting firm contracted to sell cotton to the defendants to be shipped during February, but having no cotton they forged bills of lading, and on transferring them obtained the purchase price from the defendants. In April they actually shipped the cotton to the defendants, taking bills of lading to themselves identical with the forgeries. Shortly afterwards they became bankrupt, and the plaintiff, their trustee, obtaining the bills, stopped the cotton in transit. *Held*, that the title has passed to the defendants, because the intent to appropriate is clear in spite of the form of the bill of lading, and the assent of the defendants to the late shipment is presumed since they are creditors. *Lovell* v. *Newman*, not yet reported (C. C. A., Fifth Circ.).

If the bill of lading here held by the buyers was issued by the railroad in advance of actual shipment, it would become a valid bill upon such shipment. *The Idaho*, 93 U. S. 575; *Rowley* v. *Bigelow*, 12 Pick. (Mass.) 307. For the carrier contracts with the shipper to deliver to the holder of that bill of lading. No interest in the *res* remains in the shipper because his intention to appropriate finally to the buyer is clear. The principal case differs from this only in form. True, the forged bills can acquire no validity, and a *bonâ fide* purchaser of the new bill would get the cotton. *Pollard* v. *Reardon*, 65 Fed. 848. But as between the parties a clear intent to appropriate rebuts the form of the bill of lading. *The Carlos F. Roses*, 177 U. S. 655, 20 Sup. Ct. 803; *Bailey* v. *Hudson River R. Co.*, 49 N. Y. 70. The situation is similar to that when the legal title to the goods is reserved for purposes of security, and the buyer has the risk of loss and something in the nature of an equitable title to the property. *Mirabita* v. *Imperial Ottoman Bank*, 3 Ex. D. 164. See *Wilson Grain Co.* v. *Central National Bank*, 139 S. W. 996, 999 (Tex.); *Walter* v. *Ross*, 2 Wash. C. C. (U. S.)

283, 289; WILLISTON, SALES, §§ 284, 305. It makes no difference that here the shipper's purpose is to defraud third persons. For a discussion of the presumption of assent to the late shipment, see NOTES, p. 555.

STATUTE OF FRAUDS — PART PERFORMANCE — MUTUAL WILLS. — A husband and wife orally contracted that all their property should go to the survivor. Shortly thereafter each made a will leaving all property to the other. Four days before his death, the husband, without the knowledge or consent of the wife, made a new will leaving real property to the defendants. *Held*, that the contract is specifically enforceable. *Brown* v. *Webster*, 134 N. W. 185 (Neb.).

A contract to devise is specifically enforceable against heirs, devisees, or grantees. *Smith* v. *Yocum*, 110 Ill. 142; *Crofut* v. *Layton*, 68 Conn. 91, 35 Atl. 783; *Parsell* v. *Stryker*, 41 N. Y. 480. However, an oral contract to devise realty will not be enforced in the absence of sufficient part performance to take the contract out of the Statute of Frauds. *Harder* v. *Harder*, 2 Sandf. Ch. (N. Y.) 17; *Weeks* v. *Lund*, 69 N. H. 78, 45 Atl. 249. The mere making of mutual wills has been held insufficient part performance. *Hale* v. *Hale*, 90 Va. 728, 19 S. E. 739. This has been so held on the ground that the survivor has not changed his position by such performance. *Gould* v. *Mansfield*, 103 Mass. 408; *Stone* v. *Hoskins*, [1905] P. 194. One case holds the contrary view, declaring that the survivor has undergone a risk for which money damages would be inadequate compensation. *Turnipseed* v. *Sirrine*, 57 S. C. 559, 35 S. E. 757. This view, it is submitted, is the better, and on this ground the principal case seems correct if the will is clearly referable to the contract, which, it is submitted, is questionable. Further, it has been held, in accord with the principal case, that subsequently executed mutual wills, though not referring to the contract, are in themselves a sufficient memorandum under the statute. *Shroyer* v. *Smith*, 204 Pa. St. 310, 54 Atl. 24. However, the opposite view seems preferable. *Hale* v. *Hale*, *supra*.

TRUSTS — POWERS AND OBLIGATIONS OF TRUSTEES — RIGHT OF TRUSTEE WITH LIFE INTEREST IN RES TO PROFITS FROM UNAUTHORIZED INVESTMENTS. — A trustee who was also life tenant of the *res* expended part of the fund in unauthorized investments and received thereby a larger income than could have been gained from authorized securities. *Held*, that the remainderman cannot recover the excess of income from the trustee's estate. *In re Hoyles*, [1912] 1 Ch. 67.

It has been held that a trustee making unauthorized investments and paying increased profits to the tenant for life is discharged from liability if the original fund is paid undiminished to the remainderman. *Slade* v. *Chaine*, [1908] 1 Ch. 522. But *cf. Dimes* v. *Scott*, 4 Russ. 195; *In re Hill*, 50 L. J. Ch. 551. Such a question, however, is in its essentials a controversy as to the rights of the two *cestuis que trust*, and does not involve the question of any profit arising to the trustee. It is an elementary proposition that a trustee should not make a profit out of his office. See LEWIN, TRUSTS, 12 ed., 306. When his breach of trust works evident damage to the *cestui*, it is clear that he must make reparation. *Wightwick* v. *Lord*, 6 H. L. Cas. 217. In the principal case the trustee has taken an unauthorized risk in respect to the trust *res* and has paid the increased compensation gained thereby to himself as life tenant. By his dual relation to the *res* he has gained a profit at the risk of the remainderman. As a practical result the decision allows a trustee to make a profit out of his position.

WILLS — CONSTRUCTION — "ISSUE" HELD TO MEAN "DESCENDANTS." — A will contained a devise to A. for life, and after his decease, leaving a wife